

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
VONAGE HOLDINGS CORPORATION)	
)	WC Docket No. 03-211
Petition for Declaratory Ruling Concerning)	
an Order of the Minnesota Public Utilities)	
Commission)	

**COMMENTS OF
MONTANA INDEPENDENT TELECOMMUNICATIONS SYSTEMS**

By: Michael C. Strand
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Introduction

Montana Independent Telecommunications Systems (MITS)¹ hereby files its initial comments in response to the Federal Communications Commission's (Commission's or FCC's) September 26, 2003, Public Notice seeking comment on the Petition for Declaratory Ruling² filed on behalf of Vonage Holdings Corporation (Vonage). Vonage's Petition was filed in response to an Order issued by the Minnesota Public Utility Commission (MPUC) that required Vonage to comply with Minnesota laws that regulate telephone companies. Vonage is requesting the Commission to preempt Minnesota's imposition of entry and rate regulation on Vonage's service.

On October 16, 2003, the United States District Court in the District of Minnesota issued a ruling that granted a permanent injunction preventing enforcement of the MPUC's Order. It is uncertain at this time whether that ruling will be appealed by the MPUC.

The appropriate regulatory treatment of companies such as Vonage continues to undergo scrutiny as a number of other states are investigating whether the provision of services such as those offered by Vonage should be regulated, and if so, to what extent. MITS encourages the Commission to initiate a comprehensive proceeding as soon as possible to address these issues.

¹ MITS' members include Central Montana Communications, Interbel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Triangle Telephone Cooperative Association, and Valley Telecommunications, all headquartered in Montana as well as CC Communications, Inc., headquartered in Fallon, NV.

² *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 at 1 (filed Sept. 22, 2003).

COMMENTS

MITIS is a group of independent and cooperative telephone companies that provide a variety of services to customers residing and working in some very remote, often economically distressed parts of the United States. These companies provide not only basic services supported by the federal universal service mechanisms (USF), they also offer non-supported local and long distance, wire line and wireless services, dialup and dedicated Internet access (including DSL service to nearly 150 communities with populations under 2,000).

MITIS' member companies have been providing high quality services across rural Montana and parts of Wyoming, North Dakota and Nevada since the late 1940s. Our customers rely on us to provide services that are comparable in price and functionality to those enjoyed by subscribers in urban areas. We, in turn, rely on support mechanisms such as the USF and especially on access charge revenues. Due to low customer densities and the high costs (often exceeding \$100/loop/month) associated with providing service in some of the most rugged, isolated parts of the United States, absent these revenue streams, telecommunications services, both basic and advanced, would certainly not be available at affordable rates to consumers in these areas, and in many cases, the services would simply be unavailable.

Our companies work hard each and every day to build, operate and maintain robust networks capable of providing the evolving spectrum of services demanded by our customers. Vonage and other companies have found innovative ways to use these networks to offer customers even more services that apparently can increasingly be substituted for traditional circuit-switched telephony services. One of the problems is that

so far, companies such as Vonage have been allowed to bypass paying access charges to the local exchange companies from whom they rely on local access service.

While we appreciate any application or service that increases the use of our networks, we cannot continue to build, operate and maintain these networks without adequate compensation. Vonage, and any other service provider is encouraged to use our network to provide services that are valued by our customers, but only to the extent that these service providers make equitable contributions toward the costs associated with our networks.

While the practice of recovering legitimate costs from access charges is arguably in need of serious reform, it is still a source of much of our cost recovery today. To the extent that Vonage utilizes local networks, especially to offer services that are marketed as telephony services, they should be held responsible for paying their fair share of the costs associated with those networks.

As an analogy, if enough drivers were somehow able to sneak onto and use the Pennsylvania Turnpike without paying at the toll gates, eventually the funds used to maintain the turnpike would dry up and the turnpike would deteriorate. Similarly, Vonage has thus far been able to “sneak” onto local telephone networks without paying access charges. Sure, companies such as Vonage so far have only a relatively minute share of the total market for telephony services. However, with the (artificial) comparative advantage they enjoy by skipping access charges, they are likely to be very successful at attracting ever increasing numbers of customers.

Unfortunately, requiring companies such as Vonage to pay their fair share of local network costs has oftentimes been inappropriately characterized as “stifling” or “fettering”

the development of competition. Quite the contrary, allowing these companies to “freeload” on our networks bestows on them significant and unfair competitive advantages at the expense of local exchange companies.

The Commission should immediately initiate a comprehensive investigation to determine the appropriate treatment of companies offering services such as those offered by Vonage. If these companies are allowed to continue to bypass legitimate cost recovery mechanisms designed to recover costs associated with the use of local exchange networks, the ability of local exchange companies to continue to build, operate and maintain local networks, especially in the most rural, remote and economically distressed portions of the nation will be seriously compromised.

Respectfully submitted,

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